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MONTANA LEGISLATIVE HISTORY

Chapter 515 ~~19~~ 2001

Bill H 496 S _____ Original bill & history ✓C

H. Committee on State Admin			S. Committee on Judiciary		
Hearing Date(s)	2-13	✓C	Hearing Date(s)	3-22	✓C
	2-16	✓C		3-23	✓C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	_____	___C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE BILL NO. 496

INTRODUCED BY L. JENT

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO PROCEDURES IN CIVIL CASES; CLARIFYING THE LAWS RELATING TO COLLECTIONS IN CIVIL AND CRIMINAL CASES; REVISING PROCEDURES RELATING TO COLLECTION AND JUDGMENT LIENS; ALLOWING A PARTY TO APPEAR IN PRETRIAL CONFERENCES AND HEARINGS BY TELEPHONE CONFERENCE IN MUNICIPAL COURTS, JUSTICES' COURTS, AND SMALL CLAIMS COURTS; ALLOWING JUSTICES' COURTS TO ASSIGN THE COLLECTION OF FINES TO PRIVATE PERSONS OR ENTITIES; EXTENDING THE LIEN CREATED ON REAL PROPERTY BY DOCKETING A JUDGMENT FROM 6 TO 10 YEARS; EXTENDING THE STATUTE OF LIMITATIONS FOR COMMENCING AN ACTION ON A JUDGMENT RENDERED IN A COURT NOT OF RECORD FROM 6 TO 10 YEARS; EXTENDING THE TIME PERIOD IN WHICH A WRIT FOR EXECUTION OF JUDGMENT CAN BE ISSUED FROM 6 TO 10 YEARS; MAKING CIVIL PENALTIES FOR ISSUING A BAD CHECK OR STOPPING PAYMENT APPLICABLE TO A CHECK PRESENTED ELECTRONICALLY; REQUIRING FINANCIAL INSTITUTIONS AND OTHER THIRD PARTIES HOLDING ASSETS OF A JUDGMENT DEBTOR TO RESPOND TO THE NOTICE OF LEVY IN A TIMELY MANNER; AMENDING SECTIONS 3-10-222, 3-10-304, 3-10-601, 15-1-704, 25-9-301, 25-13-101, 25-13-402, 25-30-102, 25-31-914, 27-1-717, 27-2-201, 39-51-1304, 46-17-303, 46-17-402, AND 61-6-123, MCA; AND REPEALING SECTIONS 25-13-102 AND 25-31-407, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Pretrial conferences or hearings -- appearance by telephone conference.** (1) At the discretion of the court, a party or the party's attorney may make an appearance by telephone conference in a pretrial conference or other hearing under this chapter if:

(a) the party does not need to or intend to offer evidence at the pretrial conference or hearing; and

(b) the party does not reside within the county in which the case is filed or the party's or the party's attorney's principal place of business is not located in that county.

(2) The party requesting the telephone conference is responsible for arranging the telephone conference and paying the associated costs.

Section 2. Section 3-10-222, MCA, is amended to read:

"**3-10-222. Collection and payment of ~~moneys~~ money.** ~~Justices~~ A justice of the peace ~~must receive from~~ may require the sheriff, levying officer, or constable of ~~their~~ any county to pay over all ~~moneys~~ money collected on any process or order issued from ~~their courts respectively~~ the justice's court and ~~must~~ to pay ~~the same and~~ all ~~moneys~~ money paid to ~~them~~ the justice in ~~their~~ the justice's official capacity over to the parties entitled or authorized to receive ~~them~~ the money, without delay."

Section 3. Section 3-10-304, MCA, is amended to read:

"**3-10-304. Territorial extent of civil jurisdiction.** The civil jurisdiction of a justice's court extends to the limits of the county in which it is held, and ~~mesne~~ intermediate and final process of a justice's court in a county may be issued to and served in any part of the county. A summons of a justice's court may be served ~~as provided in 25-31-407~~ in any county of the state."

Section 4. Section 3-10-601, MCA, is amended to read:

"**3-10-601. Collection and disposition of fines, penalties, forfeitures, and fees.** (1) Each ~~justice of the peace~~ justice's court shall collect the fees prescribed by law for justices' courts and shall pay them into the county treasury of the county in which the justice of the peace holds office, on or before the 10th day of each month, to be credited to the general fund of the county.

(2) ~~All~~ Except as provided in subsection (4), all fines, penalties, and forfeitures that are required to be imposed, collected, or paid in a justice's court must, for each calendar month, be paid by the justice's court on or before the 5th day of the following month to the treasurer of the county in which the justice's court is situated, except that they may be distributed as provided in 44-12-206 if imposed, collected, or paid for a violation of Title 45, chapter 9 or 10.

(3) The county treasurer shall, in the manner provided in 15-1-504, distribute money received under subsection (2) as follows:

(a) 50% to the state treasurer for deposit in the state general fund; and

(b) 50% to the county general fund.

(4) (a) The justice's court may contract with a private person or entity for the collection of any final judgment that requires a payment to the justice's court.

(b) In the event that a private person or entity is retained to collect a judgment, the justice's court may assign the judgment to the private person or entity and the private person or entity may, as an

assignee, institute suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The justice's court may pay the private person or entity a reasonable fee for collecting the judgment."

Section 5. Section 15-1-704, MCA, is amended to read:

"**15-1-704. Filing with district court.** (1) After issuing a warrant, the department may file the warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the name of the taxpayer listed as the judgment debtor.

(2) A copy of the filed warrant may be sent by the department to the sheriff or agent authorized to collect the tax.

(3) A judgment lien filed pursuant to this section may be renewed for another 10-year period ~~pursuant to the methods provided in 25-13-102~~, upon motion, or by judgment for that purpose founded upon supplemental pleadings."

Section 6. Section 25-9-301, MCA, is amended to read:

"**25-9-301. Docketing of judgment -- lien -- expiration.** (1) Immediately after the entry of the judgment in the judgment book, the clerk shall make entries of the judgment under appropriate heads in the docket kept by the clerk.

(2) From the time the judgment is docketed, it becomes a lien upon all real property of the judgment debtor that is not exempt from execution in the county and that is either owned by the judgment debtor at the time or afterward acquired by the judgment debtor before the lien ceases. Except as provided in ~~subsection (3)~~ 61-6-123, the lien continues for ~~6~~ 10 years unless the judgment is previously satisfied.

(3) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation or 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, unless the judgment is previously satisfied."

Section 7. Section 25-13-101, MCA, is amended to read:

"**25-13-101. Time limit for issuing execution.** (1) ~~Except as provided in subsection (2), the~~ The party in whose favor the judgment is given may, at any time within ~~6 years after the entry of the judgment~~ the time period prescribed in 27-2-201(1) and (2), have a writ of execution issued for its enforcement.

(2) When the judgment is for the payment of child support, the party in whose favor the judgment is given may, at any time within 10 years after the termination of the support obligation or within 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, have a writ of execution issued for its enforcement."

Section 8. Section 25-13-402, MCA, is amended to read:

"**25-13-402. How writ executed.** (1) The sheriff or levying officer shall execute the writ against the property of the judgment debtor no later than ~~60~~ 120 days after receipt of the writ by:

(a) levying on a sufficient amount of property, if there is sufficient property;

(b) collecting or selling the things in action; and

(c) selling the other property and paying to the judgment creditor or the judgment creditor's attorney as much of the proceeds as will satisfy the judgment.

(2) Any proceeds in excess of the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When the sheriff or levying officer determines that there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, the sheriff or levying officer shall levy only on the part of the property that the judgment debtor may indicate if the property indicated is sufficient to satisfy the judgment and costs.

(3) With respect to earnings of a judgment debtor, an employer shall respond to the levy based upon the earnings accrued to the end of the regular pay period in which the levy occurred. With respect to property, other than earnings of a judgment debtor, held by a third party, including but not limited to banks, credit unions, and other financial institutions and those parties identified in 25-13-306, the third party shall respond to the levy based on the assets held at the time of levy. Response must be made to the sheriff or levying officer by remitting the seized property within 2 business days following the date of the levy.

(4) Except for perishable property, the sheriff or levying officer shall hold any property or money levied upon for 10 days, excluding weekends and holidays, following notification of execution upon the judgment debtor. After that time, the sheriff or levying officer may sell the property and pay the money to the judgment creditor.

(5) If the first levy is not sufficient to satisfy the writ, the sheriff or levying officer may levy, from time to time and as often as necessary, within the ~~60~~ 120 days until the judgment is satisfied or the writ expires."

Section 9. Section 25-30-102, MCA, is amended to read:

"**25-30-102. Fees and fines -- collection.** (1) The fees and fines in municipal court must be the same as the fees and fines provided by law or ordinance, and except as provided in subsection (2), all fees and fines collected by the court must be paid into the city treasury.

(2) (a) ~~If a final judgment is entered for a fine and the fine is immediately due, the~~ The municipal court may contract with a private person or entity for the collection of ~~the fine~~ any final judgment that requires a payment to the municipal court.

(b) In the event that a private person or entity is retained to collect a ~~fine~~ judgment, the municipal court ~~is authorized to~~ may assign the judgment ~~for the fine~~ to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The municipal court, after deducting the charges provided for in 46-18-236, ~~is authorized to~~ may pay ~~to~~ the private person or entity a reasonable fee for collecting the ~~fine~~ judgment."

Section 10. Section 25-31-914, MCA, is amended to read:

"**25-31-914. Lien on real property.** The judgment rendered in a justice's court creates a lien upon any lands of the defendant upon the filing of a transcript of the original docket, certified by the clerk of the justice's court, with the office of the clerk of the district court of the county in which the lands are situated. When ~~so~~ filed and from the time of filing, the judgment becomes a lien upon all real property ~~of the judgment debtor, not exempt from execution,~~ in ~~such~~ that county~~,~~ that is owned by ~~him~~ the judgment debtor at the time or ~~which he~~ that the judgment debtor may afterwards and before the lien expires acquire and that is not exempt from execution. The lien continues for ~~6~~ 10 years unless the judgment ~~be~~ is previously satisfied."

Section 11. Section 27-1-717, MCA, is amended to read:

"**27-1-717. Issuing a bad check or stopping payment -- civil liability.** (1) A person who issues a check, draft, or order for the payment of money is liable for a service charge, as provided in subsection (2), or for damages in a civil action, as provided in subsection (3), to the payee to whom the check, draft, or order is issued, or the payee's assignee, if the check, draft, or order is:

(a) dishonored for lack of funds or credit or because the issuer has no account with the drawee; or

(b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check.

(2) The person who issues the check, draft, or order is liable to the payee or the payee's assignee for a service charge in a reasonable amount, not greater than $30. The payee or the payee's assignee may waive the service charge. Demand for the service charge must be made in writing by the payee or the payee's assignee and mailed to the address shown on the check, draft, or order or to the issuer's last-known address. The demand must state that the issuer is required to pay the value of the check, draft, or order and service charge and must state the service charge provided for in this section.

(3) The amount of damages awarded pursuant to subsection (1) must be an amount equal to the service charge plus the greater of $100 or three times the amount for which the check, draft, or order was issued. However, damages may not exceed the value of the check, draft, or order by more than $500.

(4) The remedy provided by subsection (3) is available only if:

(a) the payee or the payee's assignee has made the written demand required in subsection (2) not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded under subsection (2) prior to the commencement of the action.

(5) The remedy provided by this section:

(a) may be pursued notwithstanding the provisions of 27-1-312;

(b) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and

(c) does not affect the obligation of the issuer provided for in 30-3-423 to pay the amount of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions of this section apply.

(6) Upon introduction by the payee or the payee's assignee of evidence sufficient to establish the fact of mailing as required under subsection (2), the failure to receive the written demand is not a defense to the action allowed under subsection (3).

(7) This section applies to all checks, drafts, and orders, including those electronically presented for payment."

Section 12. Section 27-2-201, MCA, is amended to read:

"**27-2-201. Actions upon judgments.** (1) Except as provided in subsections (3) through (5), the period prescribed for the commencement of an action upon a judgment or decree of any court of record of the United States or of any state within the United States is within 10 years.

(2) The period prescribed for the commencement of an action upon a judgment or decree rendered in a court not of record is within ~~6~~ 10 years. The cause of action is considered, in that case, to have accrued when final judgment was rendered.

(3) The period prescribed for the commencement of an action to collect past-due child support that has accrued after October 1, 1993, under an order entered by a court of record or administrative authority is within 10 years of the termination of support obligation or within 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later.

(4) The period prescribed for the commencement of an action to collect past-due child support that has accrued under a support order issued in another state, in a foreign country, or in a tribal court is as provided in subsection (3) or as provided in the law of the issuing jurisdiction, whichever period is longer.

(5) An action under 46-18-247(3) to enforce an order of restitution entered by a court of record may be commenced at any time within the offender's lifetime during which restitution remains unpaid."

Section 13. Section 39-51-1304, MCA, is amended to read:

"**39-51-1304. Lien for payment of unpaid taxes -- levy and execution.** (1) Unpaid taxes, including penalties and interest assessed on unpaid taxes, have the effect of a judgment against the employer, ~~or~~ against the liable corporate officer or liable member or manager of a limited liability company referred to in 39-51-1105, or against a partner in a limited liability partnership~~,~~. ~~arising~~ The judgment arises at the time that the payments are due. The department may issue a certificate stating the amount of payments due and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time that the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment through the sheriff or agent authorized to collect the tax in the same manner as prescribed for execution upon a judgment. A notice of levy may be made by means of a certified letter by an agent authorized to collect the tax. The department may enforce the judgment at any time within 10 years of the creation of the lien or the effective date of the lien, whichever is later.

(2) A judgment lien filed pursuant to this section may be renewed for another 10-year period

~~pursuant to the methods provided in 25-13-102~~, upon motion, or by judgment for that purpose founded upon supplemental pleadings.

(3) The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal property against which the judgment is enforced if:

(a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that all taxes, penalties, and interest due from the grantor have been paid.

(4) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed under 39-51-1303, this section, or both, to collect the delinquent taxes, penalties, and interest from the:

(a) employer;

(b) liable corporate officer;

(c) liable member or manager of a limited liability company referred to in 39-51-1105; or

(d) partner in a limited liability partnership.

(5) The lien provided for in subsection (1) must be released upon payment in full of the unpaid taxes, penalties, and accumulated interest. The department may release or may partially release the lien upon partial payment or whenever the department determines that the release or partial release of the lien will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if it determines that the lien is unenforceable."

Section 14. Section 46-17-303, MCA, is amended to read:

"**46-17-303. Deposit of fines -- collection.** (1) Except as provided in subsection (2), all fines imposed and collected by a city court must be paid to the treasurer of the county, city, or town, as the case may be, within 30 days of receipt. The city judge shall file a copy of any receipt given for a collected fine with the county, city, or town clerk, as the case may be.

(2) (a) ~~If a final judgment is entered for a fine and the fine is immediately due, the~~ The city court may contract with a private person or entity for the collection of ~~the fine~~ any final judgment that requires a payment to the city court.

(b) In the event that a private person or entity is retained to collect a ~~fine~~ judgment, the city court ~~is authorized to~~ may assign the judgment ~~for the fine~~ to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedure and other postjudgment

remedies in its own name.

(c) The city court, after deducting the charges provided for in 46-18-236, ~~is authorized to~~ may pay ~~to~~ the private person or entity a reasonable fee for collecting the ~~fine~~ judgment."

Section 15. Section 46-17-402, MCA, is amended to read:

"**46-17-402. Fees and fines -- collection**. (1) The fees and fines in municipal court must be the same as the fees and fines provided by law or ordinance, and except as provided in subsection (2), all fees and fines collected by the court must be paid into the city treasury.

(2) (a) ~~If a final judgment is entered for a fine and the fine is immediately due, the~~ The municipal court may contract with a private person or entity for the collection of ~~the fine~~ any final judgment that requires a payment to the municipal court.

(b) In the event that a private person or entity is retained to collect a ~~fine~~ judgment, the municipal court ~~is authorized to~~ may assign the judgment ~~for the fine~~ to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedure and other postjudgment remedies in its own name.

(c) The municipal court, after deducting the charges provided for in 46-18-236, ~~is authorized to~~ may pay ~~to~~ the private person or entity a reasonable fee for collecting the ~~fine~~ judgment."

Section 16. Section 61-6-123, MCA, is amended to read:

"**61-6-123. Suspension to continue until judgments paid and proof given -- maximum period of suspension.** A license or nonresident's operating privilege remains suspended and may not be renewed, nor may a license be issued in the name of a judgment debtor, including a judgment debtor not previously licensed, until each judgment is stayed, satisfied in full, or satisfied to the extent provided in this part~~,~~ and until the person gives proof of compliance with 61-6-301 subject to the exemptions provided in 61-6-122 and 61-6-125 or 6 years have passed from date judgment was first entered ~~as provided in 25-9-301~~ and the person has complied with 61-6-301 and 61-6-302."

NEW SECTION. **Section 17. Repealer.** Sections 25-13-102 and 25-31-407, MCA, are repealed.

NEW SECTION. **Section 18. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 25, chapter 30, part 1; Title 25, chapter 31, part 7; and Title 25, chapter 35, part 6,

and the provisions of Title 25, chapter 30, part 1; Title 25, chapter 31, part 7; and Title 25, chapter 35, part 6, apply to [section 1].

- END -

FISCAL NOTE

Bill #: HB0496 **Title:** Generally revise procedures in civil cases

Primary Sponsor: Larry Jent **Status:** As Introduced

Sponsor signature Date Chuck Swysgood, Budget Director Date

Fiscal Summary

	FY2002 Difference	FY2003 Difference
Expenditures:	0	0
Revenue:	0	0
Net Impact on General Fund Balance:	**$0**	**$0**

Yes	No		Yes	No	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

1. There is no fiscal impact to the state funded Judiciary, the Department of Revenue, the Department of Labor and Industry, or the Department of Justice.

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	05/01/2001			
(H) Signed by Governor	05/01/2001			
(H) Transmitted to Governor	04/21/2001			
(S) Signed by President	04/21/2001			
(H) Signed by Speaker	04/19/2001			
(C) Sent to Printing	04/17/2001			
(H) Returned from Enrolling	04/16/2001			
(H) Sent to Enrolling	04/13/2001			
(H) 3rd Reading Passed as Amended by Senate	04/13/2001	99	1	
(H) Scheduled for 3rd Reading	04/13/2001			
(H) 2nd Reading Senate Amendments Concurred	04/12/2001	98	1	
(H) Scheduled for 2nd Reading	04/12/2001			
(S) Returned to House with Amendments	03/28/2001			
(S) 3rd Reading Concurred	03/28/2001	48	0	
(S) Scheduled for 3rd Reading	03/28/2001			
(S) 2nd Reading Concurred on Voice Vote	03/27/2001	47	0	
(S) Scheduled for 2nd Reading	03/27/2001			
(S) Committee Report--Bill Concurred as Amended	03/24/2001			(S) Judiciary
(S) Committee Executive Action--Bill Concurred as Amended	03/24/2001	8	0	(S) Judiciary
(S) Hearing	03/22/2001			(S) Judiciary
(S) Referred to Committee	02/28/2001			(S) Judiciary
(S) First Reading	02/28/2001			
(H) Transmitted to Senate	02/21/2001			
(H) 3rd Reading Passed	02/21/2001	99	1	
(H) Scheduled for 3rd Reading	02/21/2001			
(H) 2nd Reading Passed	02/20/2001	98	1	
(H) Scheduled for 2nd Reading	02/20/2001			
(C) Sent to Printing	02/16/2001			
(H) Committee Report--Bill Passed as Amended	02/16/2001			(H) State Administration
(H) Committee Executive Action--Bill Passed as Amended	02/16/2001	18	0	(H) State Administration
(H) Fiscal Note Printed	02/16/2001			
(H) Fiscal Note Received	02/14/2001			

(H) Hearing	02/13/2001			(H) State Administration
(C) Introduced Bill Text Available Electronically	02/05/2001			
(H) Fiscal Note Requested	02/05/2001			
(H) Referred to Committee	02/05/2001			(H) State Administration
(H) First Reading	02/05/2001			
(H) Introduced	02/05/2001			
(C) Draft Delivered to Requester	01/31/2001			
(C) Draft Ready for Delivery	01/30/2001			
(C) Draft in Assembly/Executive Director Review	01/29/2001			
(C) Draft in Final Drafter Review	01/29/2001			
(C) Draft in Input/Proofing	01/29/2001			
(C) Draft to Drafter - Edit Review [SAB]	01/29/2001			
(C) Draft in Edit	01/27/2001			
(C) Draft in Legal Review	01/26/2001			
(C) Draft Back for Redo	01/26/2001			
(C) Draft Taken by Drafter	01/26/2001			
(C) Draft Ready for Delivery	01/08/2001			
(C) Draft in Assembly/Executive Director Review	01/05/2001			
(C) Draft in Final Drafter Review	01/04/2001			
(C) Bill Draft Text Available Electronically	01/04/2001			
(C) Draft in Input/Proofing	01/04/2001			
(C) Draft to Drafter - Edit Review [SAB]	01/04/2001			
(C) Draft in Edit	01/04/2001			
(C) Draft in Legal Review	01/04/2001			
(C) Draft Back for Technical Correction	01/04/2001			
(C) Draft to Drafter - Edit Review [SAB]	01/04/2001			
(C) Draft in Edit	01/03/2001			
(C) Draft in Legal Review	01/03/2001			
(C) Draft Back for Requester Changes	01/03/2001			
(C) Draft to Requester for Review	12/12/2000			
(C) Draft Request Received	12/05/2000			

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN ALLAN WALTERS**, on February 13, 2001 at 8:00 A.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Allan Walters, Chairman (R)
Rep. Debby Barrett, Vice Chairman (R)
Rep. Tom Dell, Vice Chairman (D)
Rep. Norma Bixby (D)
Rep. Dee Brown (R)
Rep. Donald L. Hedges (R)
Rep. Hal Jacobson (D)
Rep. Larry Jent (D)
Rep. Michelle Lee (D)
Rep. Larry Lehman (R)
Rep. Ralph Lenhart (D)
Rep. Gay Ann Masolo (R)
Rep. Douglas Mood (R)
Rep. Alan Olson (R)
Rep. Holly Raser (D)
Rep. Rick Ripley (R)
Rep. Clarice Schrumpf (R)
Rep. Frank Smith (D)

Members Excused: None.

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Ruthie Padilla, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 496, 2/9/2001; HB 527, 2/9/2001; HB 340, 2/9/2001; HB 508, 2/9/2001
Executive Action: None

HEARING ON HB 496

Sponsor: **REPRESENTATIVE LARRY JENT, HD 29, BOZEMAN**

Proponents: **Steve Wade, Montana Collectors Association**
David Hall, Attorney
Mike Moore, Montana Collectors Association
Jeff Koch, Montana Collectors Association
Bob Pyfer, Montana Credit Unions Leagues
Kevin Mosier, Centron Services Inc.
Richard Rowe, MT Process Server & Levying Officer
Rachel Anderson, Check Rite
Tom England, Centron Services Inc.
Dave Anderson, Check Rite of Montana

Opponents: **George Bennett, Montana Bankers Association**
Tom Ellis, Wells Fargo Bank
Barb Alfson, Wells Fargo Bank

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 0.0}

REPRESENTATIVE LARRY JENT, HD 29, BOZEMAN stated the bill is a civil procedure bill. It modifies some of the laws that govern the rules of court and has to do with the collection of monies owed. The bill proposes to do seven things. One, allows, at the courts desecration, telephone pre-trial conferences rather than personal, if there is no additional evidence. Two, it will clarify that a summons issued by a justice court can be served anywhere in Montana. Three, it would authorize the justice courts to contract with private entities to collect judgments that are being paid to the court systems. Four, it repeals section 25-13-102 of the Montana Code. Five, it provides a judgement can be renewed upon motion or supplemental pleading to the court. Six, it clarifies that property held by third persons, other than earnings, shall respond in a timely fashion. Seven, it clarifies the collection of judgements in municipal court.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 10.5}

Steve Wade, Montana Collectors Association cites sections of the bill the association supports.

David Hall, Attorney stated in his experience most justice courts currently do these things and feels this bill needs to be passed.

This bill is simply clarification, housecleaning and makes the rules more efficient.

Mike Moore, Montana Collectors Association said he put together some of the proposed legislation. Many things the bill does makes the process more efficient and ensures the financial responsibility is placed on the parties rather than the courts.

Jeff Koch, Montana Collectors Bureau Services stated he would like to be on record as being a proponent to the bill.

Bob Pyfer, Montana Credit Unions Leagues said they support the bill. They feel the bill will improve the collection process for creditors.

Kevin Mosier, Centron Services Inc. said he would like to be on record as a proponent for the bill.

Richard Rowe, MT Process Server & Levying Officer submitted written testimony. **EXHIBIT(sth36a01)**

Opponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 24.4}

George Bennett, Montana Bankers Association submitted a proposed amendment. **EXHIBIT(sth36a02)**

Tom Ellis, Wells Fargo Bank said they are opposed to section 8 of the bill. The provisions of the bill makes it difficult o serve their customers properly. He then discussed the what the bank does to process a levy and how the bill would impact them.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 6}

REPRESENTATIVE BROWN asked if there is a response time given for the officers. **Tom Ellis** replied no, they have a legal processing area that knows IRS and State of Montana requirements built into the system.

REPRESENTATIVE OLSON asked if the amendments would take care of their concerns. **Tom Ellis** said the amendments he has read will address his concerns.

REPRESENTATIVE JENT asked what happens if there was an individual who owed child support money. The individual has $1000.00 in his

account and the support order is for $400.00, what happens to the $400.00. **Tom Ellis** replied when they receive the levy, within 30 minutes a hold will be put on the account and no money can go anywhere.

REPRESENTATIVE BARRETT asked if the bill is placing much financial restriction to the financial institutions. **REPRESENTATIVE JENT** replied that he has the same concern and plans on meeting with the credit unions and bankers association to work the issues out.

REPRESENTATIVE JACOBSON asked **David Hall** what his opinion is in regards to the maximum number of days that could be used in this situation. **David Hall** stated he has concerns about the 5 days notice because the statute is unclear as to when the 5 day notice is to be sent out. Is it to be sent out when the levy is sent to the bank or when you receive the money back from the bank? This needs to be clarified in the bill.

Written testimony was submitted on behalf of Darrel Van Koten. **EXHIBIT(sth36a03)** and Dust Lehman. **EXHIBIT(sth36a04)**

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 21.0}

REPRESENTATIVE JENT said he will commit to read the rest of the code before executive action is done on the bill. He will also get together with the parties to make it work.

HEARING ON HB 527

Sponsor: **REPRESENTATIVE KIM GILLAN, HD 11, BILLINGS**

Proponents: **Darrell Holzer, AFL-CIO**
Eugene Fendersen, Montana Highway Labor Union

Opponents: None

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 22.3}

REPRESENTATIVE KIM GILLAN, HD 11, BILLINGS stated the bill amends existing law to allow, on a voluntary basis, project labor agreements. This bill is being brought forth because it is an important tool for Montana to use in economic development. The project labor agreements were eliminated last session by **Fred**

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN ALLAN WALTERS**, on February 16, 2001 at 8:00 A.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Allan Walters, Chairman (R)
Rep. Debby Barrett, Vice Chairman (R)
Rep. Tom Dell, Vice Chairman (D)
Rep. Norma Bixby (D)
Rep. Dee Brown (R)
Rep. Donald L. Hedges (R)
Rep. Hal Jacobson (D)
Rep. Larry Jent (D)
Rep. Larry Lehman (R)
Rep. Ralph Lenhart (D)
Rep. Gay Ann Masolo (R)
Rep. Douglas Mood (R)
Rep. Alan Olson (R)
Rep. Holly Raser (D)
Rep. Rick Ripley (R)
Rep. Clarice Schrumpf (R)
Rep. Frank Smith (D)

Members Excused: Rep. Michelle Lee (D)

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Ruthie Padilla, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 565, 2/9/2001; HB 518, 2/9/2001; HB 116, 2/9/2001
Executive Action: HB 518; HB 116; HB 496; HB 508; HB 565

Discussion:
REPRESENTATIVE MOOD submitted and discussed the proposed amendment to the bill. **EXHIBIT(sth39a07)**

Motion/Vote: **REP. MOOD** moved that **HB 116 BE AMENDED. Motion carried unanimously.** 16-0 with **LEE** and **WALTERS** absent.

Motion/Vote: **REP. MOOD** moved that **HB 116 DO PASS AS AMENDED. Motion carried unanimously.** 17-0 with **LEE** absent.

EXECUTIVE ACTION ON HB 496

{Tape : 2; Side : B; Approx. Time Counter : 16}

Motion: **REP. RIPLEY** moved that **HB 496 DO PASS.**

Motion: **REP. OLSON** moved that **HB 116 BE AMENDED.**

Discussion:

Sheri Heffelfinger explained what effect the amendment will have on the bill.

REPRESENTATIVE BROWN stated in her district there are a lot of transients, that would be a nightmare to try to personally serve a writ. **REPRESENTATIVE JENT** clarified they do not have to be personally served the writ. The writ has to be personally served to the bank.

REPRESENTATIVE LEHMAN asked if Social Security Numbers can be used for this purpose. He does not feel the Social Security Number should be on the debt collection paper. **REPRESENTATIVE OLSON** said they can use SOCIAL SECURITY NUMBER or Tax Identification Number.

REPRESENTATIVE BROWN said there are a lot of common names out there and without a SOCIAL SECURITY NUMBER, it would be very difficult for the banks to identify the individual. She feels it needs to be on the papers.

Motion: **REP. JENT** moved that the **AMENDMENT** to **HB 496 BE AMENDED.** Vote: Motion **carried unanimously.** 17-0 with **LEE** absent.

Motion: **REP. OLSON** moved that **HB 496 BE AMENDED.** Vote: Motion **carried unanimously. 17-0** with **LEE** absent.

Motion/Vote: **REP. OLSON** moved that **HB 496 DO PASS AS AMENDED. Motion carried unanimously. 18-0**

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 22, 2001 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 213, HB 521, HB 496, 3/19/2001
Executive Action: SR 21, HB 214, HB 66

HEARING ON HB 213

Sponsor: **REP. BRAD NEWMAN, HD 38, BUTTE**

Proponents: **Mike McGrath, Attorney General**
Judy Wang, Assistant City Attorney, Missoula
Marty Ludemann, Captain, City of Missoula Police Department
Troy McGee, MT. Chief Police Association

of a certain amount causing penalties, the enhancement would be in existence.

CHAIRMAN GROSFIELD asked if there should be an exclusive list. **REP. NEWMAN** said this list was narrow and not very broad. He said the enhancing factor offers burdens on the state to plead and prove the existence factor.

CHAIRMAN GROSFIELD asked if this would provide notice or not. **REP. NEWMAN** said this process needs to be modified.

SEN. O'NEIL asked if it would be a sentence enhancement if an offender did a similar crime before. **REP. NEWMAN** said Montana Law allows for enhanced penalties for persistent felony offenders.

SEN. O'NEIL asked if it should be included within this bill. **REP. NEWMAN** said there was already a statutory procedure for seeking and obtaining the persistent felony offender information.

Closing by Sponsor:

REP. BRAD NEWMAN, HD 38, BUTTE, summarized the bill and urged support of this bill.

HEARING ON HB 496

Sponsor: **REP. LARRY JENT, HD 29, BOZEMAN**

Proponents: **Mike Moore, Attorney, Missoula**
Tom England, Owner Collection Agency, Helena
Bob Pyfer, Executive Vice President, MT. Credit Unions
Cecil Hawkins, Reverend, Billings
Kevin Moser, President, MT. Collection Association
Steve Wade, MT. Collectors Association
Tom Ellis, District President, Wells Fargo Bank
George Bennett, Attorney, MT. Bankers Assoc.
Wayde Cooperider, Deputy Sheriff, Lewis & Clark County

Opponents: **Richard Rowe, Process Server and Levying Officer, Missoula**

Opening Statement by Sponsor:

REP. LARRY JENT, HD 29, BOZEMAN, said this bill allows out of town councils available for trials. He explained clarification of the bill and talked about contract entities, which provides and modifies the codes. He pointed out sections of the bill and went through each. He handed out proposed amendments for the bill **EXHIBIT(jus65a02).**

Proponents' Testimony:

Mike Moore, Attorney, Missoula, handed out another proposed amendment **EXHIBIT(jus65a03)** and letters of support **EXHIBIT(jus65a04).** He talked about the depositors due process rights being protected and gave background of this issue. He mentioned Section nine and how the bank's perspective was used on a levy. He felt the notice of procedure was important.

{Tape 2; Side B}

Tom England, Owner Collection Agency, Helena, urged support of this legislation. He supported the proposed amendments and agreed with proponents statements.

Bob Pyfer, Executive Vice President, MT. Credit Unions, supports this bill and felt it enhances the collection process. He was concerned about the two day return time and it may be difficult with the process. He said potential liability would be considered by holding funds.

Cecil Hawkins, Reverend, Billings, explained courts he had visited and the costs incurred. He felt this bill would assist the system with funds needed. He supported the amendment for the bill and asked for a do pass motion.

Kevin Moser, President MT. Collection Association, supports this bill.

Steve Wade, MT. Collectors Association, urged to concur on this bill. He agreed with the amendments.

Tom Ellis, District President, Wells Fargo Bank, objected to the amendments and expressed his concern. He explained the burden due to the person being levied against. He likes the original language in the bill and asked for support of that legislation.

George Bennett, Attorney, MT. Bankers Association, handed in his testimony **EXHIBIT(jus65a05).**

Wayde Cooperider, Deputy Sheriff, Lewis & Clark County, felt the amendments to be controversial. He didn't agree with Section

nine of the bill. He addressed issues to consider by leaving the current language in. He expressed the collections department should be trained to know procedure. He did support the existing language of the bill.

Opponents' Testimony:

Richard Rowe, Process Server and Levying Officer, Missoula, handed out a list of levies **EXHIBIT(jus65a06).** He talked about the levies done throughout the year. He stated the practical aspects of service and process and how this bill would effect it. He said they cannot mail all levies out to be served because some of the main offices are out of state. He didn't think the bill was written well and did not offer protection to the departments involved.

{Tape 3; Side A}

Questions from Committee Members and Responses:

SEN. MIKE HALLIGAN asked to respond to issues from Section nine. **Mike Moore** said the legislation would be bad without the proposed amendments. He said a levy is another procedure to seize funds of a debtor. He would like the mailing ability as part of the law.

SEN. HALLIGAN asked the sponsor for response and to the officer's issues pertaining to Section nine. **REP. JENT** felt by striking the whole section it would take out considered choices.

SEN. GRIMES mentioned the concerns brought to the legislature and the title was broad enough to be decided upon.

SEN. HALLIGAN asked for accomplishments to the existing law. **Cecil Hawkins** talked about civil action coming from Deer Lodge. He talked about additional lawsuits coming out and felt there should be a way to curtail this and set a foundation.

SEN. O'NEIL questioned the title of the bill and asked if district courts limit this action. **REP. JENT** said the new section amends the justice and municipal courts of procedure.

SEN. O'NEIL asked about the new section and its direction of drafting. **REP. JENT** pointed to the last section of the bill and explained the drafting.

SEN. GRIMES asked if they would not be amending Section nine. **George Bennett** said they opposed the striking of Section nine because it is indirectly sanctioning service by mail.

SEN. HALLIGAN asked how to allow for the mailing option. **George Bennett** said they tried to work with the debt collectors and the problems were not addressed dealing with mail services.

SEN. HALLIGAN asked if debt collectors are subject to a lawsuit. **George Bennett** said the judgement debtor could sue.

SEN. HALLIGAN felt the issue of the separate amendments could become a problem with this bill.

{Tape 3; Side B}

SEN. GRIMES added the concern raised, after the date, that this bill and amendments could have been introduced. He asked if the amendments cause more workload. **Bob Pyfer** answered adequate identification should be obtained of the judgement debtor. He didn't think there would be problems with striking sections as needed.

SEN. GRIMES asked if there was concern dealing with serving a notice on everyone. **Bob Pyfer** said this is not a problem. He understands the view of large notices especially if they are not customers of the institution.

SEN. GRIMES asked what the House hearing was like and thought a subcommittee may be needed. **REP. JENT** said it was an extensive hearing and added the results were the amendments.

Closing by Sponsor:

REP. LARRY JENT, HD 29, BOZEMAN, explained the process of the bill and tried to clarify the drafting of the bill. He addressed the amendments dealing with the prison issue. He asked for support of this legislation.

EXECUTIVE ACTION ON SR 21

Motion: **SEN. RIC HOLDEN** moved **SR 21 DO PASS.**

Discussion:

SEN. HOLDEN felt **Judge Todd** was respected and had good credentials.

SEN. O'NEIL looked through credentials of **Judge Todd** and felt he would be a good candidate.

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 23, 2001 at 8:15 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Anne Felstet, Committee Secretary
Valencia Lane, Legislative Branch
Jodi Pauley, Transcriptionist

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: None
Executive Action: HB 195, HB 208, HB 219, HB 254, HB 208, HB 261, HB 359, HB 521, HB 563, HJ 17, HB 496, HB 290, HB 570, HB 182

EXECUTIVE ACTION ON HB 195

Motion: **SEN. RIC HOLDEN moved HB 195 BE CONCURRED IN.**

Discussion:

Motion: **SEN. PEASE made a conceptual amendment to change the language from 15 years to 10 years. Motion carried 7-0.**

Vote: **Motion carried 6-1 with SEN. O'NEIL voting no that HB 563 BE CONCURRED IN AS AMENDED. SEN. GROSFIELD and DOHERTY were excused.**

EXECUTIVE ACTION ON HJR 17

Discussion:

Valencia Lane discussed the amendments **EXHIBIT(jus66a05).**

Motion/Vote: **SEN. HALLIGAN moved HJR 17 BE TABLED. Motion carried 7-0 with SEN. GROSFIELD and DOHERTY being excused.**

{Tape 3; Side A}

EXECUTIVE ACTION ON HOUSE BILL 496

Discussion:

Valencia Lane explained the amendments handed out **EXHIBIT(jus66a06).** She also explained some informal amendments that accompanied the formal set **EXHIBIT(jus66a07).**

Motion: **SEN. GRIMES moved the amendments.**

Discussion:

SEN. O'NEIL asked about the changes. **Valencia Lane** said this was amendment seven with a new Subsection(c).

SEN. O'NEIL asked if there was personal service, or was it only effective in writing. **Valencia Lane** said it was in subsection (b)1 and 2. Subsection (2) only dealt with mail service.

SEN. GRIMES asked if this was consented to on a case by case basis or could a process server have a contract or written agreement with a bank. **Steve Wade, Burlington Northern Santa Fe,** explained if a bank wanted to allow service by mail they could consent to the levying officer or sheriff and it could also be terminated.

SEN. O'NEIL asked how this applied if a writ was mailed to a person who was not a legal entity, but a person. **Steve Wade** said

if it were upon an individual it would still probably have to be personal service.

SEN. O'NEIL wondered about the individual's situation and gave an example. **Steve Wade** explained it would depend upon the circumstances.

SEN. O'NEIL asked for clarification. **Valencia Lane** said they could have language added offering an individual to be served personally.

SEN. O'NEIL used an example of a rancher holding a horse. **Valencia Lane** said these amendments were drawn up with the thought in mind that there would be mail service on legal entities, and they would clarify personal service on an individual.

Vote: **Motion carried 7-0 with SEN. HALLIGAN and DOHERTY being excused.**

Discussion on Amendments by Mr. Hawkins:

CHAIRMAN GROSFIELD said there were some amendments proposed in committee by **Mr. Hawkins.** The amendments really don't pertain to this bill but the title was broad enough to include them under the bill and he asked if the committee had any comments.

SEN. GRIMES said there were some concerns because there hadn't been any hearing on the issue even though it did fit within the title of the bill. He added this would be better to go into an interim study, if passed now it may be a constitutional issue and then the Supreme Court would make a decision and make it impossible for them to work on it.

SEN. O'NEIL asked if Section (3) could be added to the bill. **SEN. MCNUTT** said they did not have a hearing on this and it shouldn't be included in the bill at this time.

SEN. HALLIGAN said this was a constitutional issue and he felt the courts were already doing this internally.

Motion: **SEN. GRIMES moved HB 496 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. O'NEIL disagreed with the issue and added there must have been a hearing on this issue as there was testimony on it. **SEN.**

HALLIGAN said there was no notice to the public that this issue was going to be discussed at the hearing.

Vote: **Motion carried 8-0 with SEN. DOHERTY being excused.**

{Tape 3; Side B}

EXECUTIVE ACTION ON HOUSE BILL 290

Discussion:

CHAIRMAN GROSFIELD addressed the testimony by the proponents. He felt the wording "overcome by deception, coercion or surprise", would lead to unintended consequences for other kinds of situations that do not involve assault.

SEN. GRIMES said they have discussed many other bills this would also apply to. He said the word "surprise" could be the problem and asked if it was defined anywhere in statute.

Substitute Motion: **SEN. HOLDEN moved a conceptual amendment, page 1, line 16 to strike "or surprise".**

Discussion:

SEN. GRIMES wondered if someone was in a dentist chair and there was sexual conduct, could deception and coercion apply in this case. He said surprise has to do with the unexpected. **Valencia Lane** said on line 11, the definition was for 45-5-503 and did not apply to assault. She said most of the examples that were used in testimony had to do with surprise. She felt surprise was critical to the people who wanted the bill.

SEN. HALLIGAN said when they were talking about the surprise issue they also have to include the sexual intercourse component as well.

Withdrawn Motion: **SEN. HOLDEN withdrew his motion to strike "surprise".**

Discussion:

SEN. O'NEIL said most of this was covered under assault. He offered examples of how to prove the situations.

Motion: **SEN. O'NEIL moved to Table HB 290. Motion failed 3-5 with SEN. BISHOP, MCNUTT and O'NEIL voting aye.**